

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DARRELL M. JENKINS, #1510019,

Petitioner,

v.

RICK THALER, Director,

Respondent.

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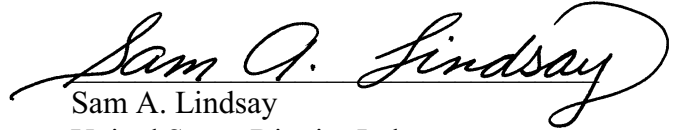
Civil Action No. **3:12-CV-1454-L (BK)**

ORDER

On September 19, 2012, the court denied Darrell M. Jenkins's ("Jenkins" or "Petitioner") section 2254 Petition for Writ of Habeas Corpus, and dismissed this action with prejudice as barred by applicable statute of limitations. Jenkins subsequently appealed. On December 10, 2012, the United States Court of Appeals for the Fifth Circuit remanded the case for a determination as to whether Petitioner deposited timely his notice of appeal in the prison's internal mail system. Specifically, the Fifth Circuit requested this court to make a determination as to whether Petitioner delivered his notice of appeal to prison officials for mailing on or before October 18, 2012, the last day for filing timely a notice of appeal. The matter was referred to Magistrate Judge Renee Harris Toliver. On May 8, 2013, the magistrate judge entered Amended Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report"), determining that Petitioner's notice of appeal was deposited in the prison's internal mail system on October 23, 2013, and therefore was untimely. No objections to the Report were filed. Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions of the magistrate judge are correct, **accepts** them as those of the court, and determines that the appeal is untimely. Accordingly, the Clerk of the Court

is **directed** to return this case to the United States Court of Appeals for the Fifth Circuit for further proceedings or dismissal, as may be appropriate.

It is so ordered this 6th day of June, 2013.


Sam A. Lindsay
United States District Judge